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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

SAIL ALBERTO JOYA-QUINTANILLA,

Petitioner,

v.

MICHAEL B. MUKASEY, Attorney  
General,

Respondent.

No. 05-77238

Agency No. A77-332-209

MEMORANDUM<sup>\*</sup>

On Petition for Review of an Order of the  
Board of Immigration Appeals

Submitted August 26, 2008<sup>\*\*</sup>

Before: SCHROEDER, KLEINFELD, and IKUTA, Circuit Judges.

Sail Alberto Joya-Quintanilla, a native and citizen of El Salvador, petitions for review of the Board of Immigration Appeals' ("BIA") order denying his motion to reconsider its previous decision and to reopen removal proceedings. We

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<sup>\*</sup> This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

<sup>\*\*</sup> The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

have jurisdiction pursuant to 8 U.S.C. § 1252. We review for abuse of discretion the denial of a motion to reconsider or reopen and review de novo due process claims. *Lara-Torres v. Ashcroft*, 383 F.3d 968, 972 (9th Cir. 2004), *amended by* 404 F.3d 1105 (9th Cir. 2005). We deny the petition for review.

The BIA did not abuse its discretion in denying the motion to reconsider as untimely because Joya-Quintanilla filed the motion more than 30 days after the BIA's final order of removal. *See* 8 C.F.R. § 1003.2(b)(2) (motion to reconsider must be filed within 30 days after the mailing of the BIA's decision).

The BIA also did not abuse its discretion in denying the motion to reopen because Joya-Quintanilla did not establish the prejudice required to prevail on a claim of ineffective assistance of counsel. *See Rojas-Garcia v. Ashcroft*, 339 F.3d 814, 826 (9th Cir. 2003) (petitioner must show plausible grounds for relief to establish prejudice).

**PETITION FOR REVIEW DENIED.**